RECENT CASE NOTES

BILLS AND NOTES—FORGED SIGNATURE OF DRAWER—RIGHT OF DRAWEE TO RECOVER PAYMENT MADE TO HOLDER.—The plaintiff bank forwarded a check received from a depositor to its correspondent for collection. Two weeks after payment had been made by the drawee bank, the latter discovered that the drawer's signature had been forged and demanded, sued for, and recovered from the collecting bank the amount of the check, this plaintiff taking active part in the defense. The present suit was then brought to recover from the drawee the same sum. *Held,* that the plaintiff was barred by the judgment, with a dictum that a complete defense was available in the previous action, since the act of 1849 permitted recovery by a drawee of payments made upon forged paper only when the drawee was not negligent so as to cause the holder to change his position. *Bank of Portland v. Bank of Philadelphia* (1920, Pa.) 110 Atl. 792.

Actions by a drawee for the recovery of money paid upon a check in which the drawer's signature was subsequently discovered to have been forged, are governed by rules on which decisions involving forged indorsements and alterations have no bearing. *White v. Bank* (1876) 64 N. Y. 316; 10 L. R. A. (N. S.) 49, note. Most jurisdictions have followed the leading case on this point, which denied recovery on the ground that it was incumbent upon the drawee to satisfy himself that the signature was genuine before accepting or paying the bill. *Price v. Neal* (1762, K. B.) 3 Burr. 1354; Woodward, *Quasi-Contracts* (1913) sec. 80. This rule is based, not merely upon estoppel or the negligence of the drawee, as is often stated, but upon public policy, namely, that, as between the drawee and holders in due course, the drawee bank should be deemed the place of final settlement. *Germania Bank v. Boutell* (1895) 60 Minn. 189, 62 N. W. 327. The doctrine does not apply when the holder in any way contributed to the success of the fraud. *Rouvant v. San Antonio Bank* (1885) 63 Tex. 610. Nor is it available to a holder who paid no value. *Title Guarantee & Trust Co. v. Haven* (1909) 196 N. Y. 487, 89 N. E. 1082. A few states have held that the drawee may recover unless he is guilty of negligence resulting in loss to the holder. *First Nat. Bank v. Bank of Wyndmere* (1906) 15 N. D. 299, 108 N. W. 546. Pennsylvania obtained this result by statute, as seen in the principal case. Section 62 of the N. I. L. provides that the acceptance of a bill admits the genuineness of the drawer's signature. It is generally held that payment of a check must necessarily include acceptance thereof and that this section therefore adopted the doctrine of *Price v. Neal, supra. Bank of Rolla v. Bank of Salem* (1910) 141 Mo. App. 719, 125 S. W. 513; Brannan, *The Negotiable Instruments Law* (3d ed. 1920) sec. 62. One state, at least, which formerly adhered to the "change of position" rule now accepts this view. *Cherokee Bank v. Trust Co.* (1912) 33 Okla. 342, 125 Pac. 464. A few have avoided doing so through most fallacious reasoning, for example, by holding that the holder warrants the validity of the draft by his negotiation, or indorsement, of it to the drawee. *First Nat. Bank v. Brule Nat. Bank* (1917) 38 S. D. 396, 161 N. W. 616. But such a warranty arises only in case of a sale of the instrument, and not when it is presented to the drawee for payment. *Dedham Bank v. Everett Bank* (1901) 177 Mass. 392, 59 N. E. 62. The Pennsylvania courts, relying on the section of the N. I. L. which provides that an acceptance must be in writing, consider that only certification can amount to acceptance, so that their existing law was not altered. *Union Bank v. Franklin Bank* (1915) 249 Pa. 375, 94 Atl. 1085. Whether correct or not, this point of view is fatal to uniformity, for the attainment of which the N. I. L. was adopted.